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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



Appellants: Dwip Banerjee and
Rabindranath Dutta

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Making

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BRIEF OF APPELLANTS

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Appellants timely filed a Notice of Appeal to this Board on February 24, 2004 appealing the decision of the Examiner in the Final Office Action dated October 27, 2003, for the above captioned application. Appellants hereby submit this Brief of Appellants pursuant to 37 CFR 1.192.

(1) REAL PARTY IN INTEREST

The real party of interest in this action is International Business Machines Corporation, the recorded assignee of the entire right, title and interest in and to the patent application now under appeal before this Board. International Business Machines Corporation is a corporation of the State of New York, having a place of business at Armonk, New York 10504.

(2) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative, or Assignee that will affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

(3) STATUS OF THE CLAIMS

The status of all claims in the application under appeal is as follows: claims 1-39 stand rejected. All of the rejected claims 1-39 are under appeal.

(4) STATUS OF AMENDMENTS

On December 18, 2003 Appellants filed a response to the Final Office Action from which this appeal is taken. In the response, pursuant to 37 CFR 1.116, Appellants filed an amendment to claim 18 to correct a typographical error. In the Advisory Action mailed January 23, 2003, the Examiner indicated that the amendment to claim 18 had been entered.

(5) SUMMARY OF THE INVENTION

Appellants identified a need for a method and associated computer program product to enable a group of individuals or entities to act as a single decision-making unit in determining whether to implement a course of action, such as, for example, purchasing or selling a block of stock. (Specification, p. 2, lns. 14-16).

The present invention provides a method and computer program product for promoting a collective decision from a plurality of decision making entities that are in electronic communication with a central forum coordinator that is responsible for managing the decision-making process. (Specification, p. 5, lns. 9-12). The method includes querying the plurality of decision-making entities to arrive at a decision that represents the collective will of the decision-making entities. (Specification, p. 5, lns. 23-25). A simple example of the claimed method includes the following disclosed stock trading scenario. (Specification, p. 10, lns. 20-25). A proposal for a specified stock purchase (“the proposed action”) is communicated to all registered forum participants. *Id.* The responses “for” and “against” the proposal (qualitative decision parameters) are tallied and recorded in an electronic database maintained by the instant messaging application. *Id.* If the number of responses cast in favor of the proposal meets or exceeds the pre-established minimum setpoint value, then cumulative support for the proposed action has been reached and a collective decision is made. *Id.* This decision may authorize the central forum coordinator to implement the proposed action, for example by transmitting a stock purchase order to a remote trading network. *Id.*

One step of the claimed method is “maintaining identification for a group of decision making entities in a memory device.” (Claims 1, 19). A decision-making entity may be, for example, an individual, family, group, corporation, officer, or employee that has registered an

interest in participating in a decision making forum. (Specification, p. 12, lns. 21-23). The source member database 202 (FIG. 1) will contain master records for each decision-making entity and each trading company (broker) approved by the parent organization. (Specification, p. 15, lns. 1-3).

Another step of the claimed method is “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action.” (Claims 1, 19). Specific functions of the central forum coordinator may involve . . . setting at least one setpoint value that can be used to determine when cumulative support for a decision has been reached. (Specification, p. 6, lns. 20-23). From FIG. 4A, in state 626, the forum coordinators establish decision setpoints and formulate queries for communicating to forum participants. (Specification, p. 23, lns. 9-13). The support databases are updated to include the setpoints and queries in state 630. *Id.*

A third step of the claimed method is “communicating a query to the plurality of decision-making entities, wherein the query includes a description of the proposed action.” (Claims 1, 19). A query must include a description of the proposed action and a decision parameter that dictates the manner in which an indication of support should be presented. (Specification, p. 6, lns. 26-27). In one embodiment of the present invention shown in FIG. 1, the instant messaging application 200 is programmed to communicate queries and forum data to registered forum participants’ computers 100. The method queries the decision-making entities so that each of the decision-making entities may respond using specified decision parameters to indicate support for the proposed action. (Specification, p. 7, lns. 8-9).

Yet another step of the claimed method is “receiving responses to the query from the plurality of decision-making entities, wherein each response includes an indicator of support for

the proposed action.” (Claims 1, 19). In an embodiment of the present invention shown in FIG. 4A, in state 632, the collaboration manager receives incoming forum responses and messages. (Specification, p. 23, lns. 15-16). If, in state 634, it is determined that the responder is properly authorized to respond to the query, then in state 638, the master forum page is updated to include the authorized response. (Specification, p. 24, lns. 1-2). The indicator of support may be of a type selected from qualitative, quantitative, functional or a combination thereof. (Specification, p. 3, lns. 4-5). The indications of support may be processed by the central forum coordinator in accordance with a predetermined formula, such as cumulative support or a weighted cumulative support. (Specification, p. 7, lns. 1-4).

Another step of the claimed method is “determining the cumulative support from the query responses received.” (Claims 1, 19). The central forum coordinator determines if sufficient support for a proposition has been reached, *i.e.*, the responses contain decision parameter values that, when processed by the predetermined formula, provide a collective value greater than a minimum setpoint value.” (Specification, p. 7, lns. 9-13). The Merriam-Webster dictionary defines “determine” as “to find out or come to a decision about by investigation, reasoning, or calculation.” Appellants use “determining” in its usual and common meaning, by claiming a computer implemented method that includes the step of “coming to a decision” based upon the cumulative support from the query responses.

Cumulative support for a proposal is measured by comparing participants’ responses or the associated state change of one or more of the decision parameters with one or more pre-established setpoint values. (Specification, p. 10, lns. 16-18). The cumulative decision is conditioned on the collective response having achieved a predetermined setpoint value. (Specification, p. 10, lns. 18-20). As disclosed in the example of the stock trade example, *supra*,

the responses “for” and “against” the proposal in the query to purchase stock are tallied and recorded in an electronic database and if the responses cast in favor of the purchase meet or exceed the pre-established setpoint value, then cumulative support for the proposed action has been reached and a collective decision is made. (Specification, p. 10, lns. 22-29).

The remaining step of the claimed method is “automatically implementing the proposed action if the cumulative support is greater than the setpoint.” (Claims 1, 19). If cumulative support for a decision is reached, then the decision is implemented. (Specification, p. 7, lns. 13-14). Preferably, the decision is automatically implemented through electronic communication without requiring further human interaction.

Summarizing claims 1 and 19, as an example of a simple embodiment of Appellants’ claimed invention, Appellants claim a method and computer program product that enables a plurality of decision-making entities to vote for or against a proposal that is communicated to them as a query. The method receives responses from each of the decision-making entities and determines the cumulative support for and against the proposal. If the support for the proposal is greater than a pre-determined setpoint value, then the proposal is automatically implemented.

(6) ISSUES

The issue upon appeal is whether claims 1-39 should stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0174000 of Katz, *et al.* (hereinafter Katz) in view of U.S. Patent Application Publication No. 2002/0138582 of Chandra, *et al.* (hereinafter Chandra).

(7) GROUPING OF THE CLAIMS

a. Claims 1-18 are directed to a computer implemented method. The claims in this group stand or fall together.

b. Claims 19-39 are directed to computer program product. The claims in this group stand or fall together.

(8) ARGUMENT

A. Description of the Katz Disclosure

Katz discloses a method for managing a workflow process that is directed towards the procurement industry to assist a user with procurement decisions, sourcing decisions and strategic sourcing decisions. (Katz, Abstract). The workflow process provides a plurality of steps for discovering data, analyzing data, alerting the user about the data, recommending actions to the user based on the data, and executing those actions. *Id.*

FIG. 1C illustrates an embodiment of a Value Chain Intelligence (VCI) system as disclosed by Katz. (Katz, ¶ 24). The VCI system 28 is an enterprise system that preferably collects, analyzes and integrates data from a plurality of data sources internal to an enterprise with data from a plurality of data sources external to an enterprise, enabling users to make better decisions about sourcing and procurement. (Katz, ¶ 39). The VCI system obtains, discovers and updates a wide variety of internal and external data for items such as components parts, with the data stored so that the user can query the system (such as by part number, type of characteristic, memory density of part, speed of part), to enable a more optimum strategic decision-making process. (Katz, ¶ 39).

FIG. 4 is a flowchart illustrating the workflow process and services of a VCI system. (Katz, ¶ 28). The internal data 30 and external data 32 are loaded into the data mart 74 and processed by a plurality of modules, which deliver a plurality of functions and implement VCI workflow process 73. (Katz, ¶ 44). Data flows from the data mart 74 through the Discovery 76, Analysis 78, Recommendation 80 and Execution 82 modules and any new data generated in

these modules is sent to the data mart 74 for storage. (Katz, FIG. 4). Thus, the user, when accessing the functionalities of the modules, is guided through the workflow process. (Katz, ¶ 45). Accordingly, discovery services 76 assist the user in identifying a plurality of parameters that are important to the user's task so that the user can obtain the necessary data for making a business decision. *Id.* Analysis services 78 use the input of the discovered data to produce reports intended to assist the user in analyzing the discovered data. *Id.* Recommendation services 80 use the reports and raw data as input to make recommendations for possible actions. *Id.* Finally, the recommendations may be used as input for the user to decide which recommendations to execute in execution services 80. *Id.*

The VCI system further includes a data alert module. (Katz, ¶ 130). This module enables users to monitor vast amounts of data by identifying conditions for which they choose to be alerted. *Id.* These conditions may range across any data contained in the data mart 74. (Katz, ¶ 144). Alerts may be owned by a single user, a class of users, or any arbitrary group of users. (Katz, ¶ 155). Ownership refers to the ability to specify an alert, access the specification of an alert, modify the specification of an alert, share the alert of the specification with one or more users, or be the destination of the action that the alert caused. *Id.*

Alerts reduce the latency period in decision-making by informing users of key events, such as component shortages, price shifts, supplier problems, and schedule changes in order to allow synchronization of component procurement and operations and inventory cost reductions. (Katz, ¶ 152). A list of possible alerts include, *inter alia*, a PO was placed with a non-qualified supplier, a price for a given component part fell below or above a certain percentage level from the contract price, an established supplier lost approval status, and a list of component parts in a bill of material that have lead-times greater than a set lead-time limit. (Katz, ¶ 265-293).

Yet another module of the VCI system includes the strategic component identification module. (Katz, ¶ 153). This module allows the user to identify which components are strategic (critical and important to the operations) and which are tactical (less critical and easier to replace). *Id.* The strategic component identification module creates a “criticality rating” based on a predetermined scale and derived from a plurality of variables that include, *inter alia*, cost per unit, total spent on part, price volatility and rate of depreciation for the part. (Katz, ¶ 153-165). After all the parts have been rated, the module allows users to select which parts to consider strategic and which to consider tactical by defining a criticality rating threshold for each category. (Katz, ¶ 166).

Another module of the VCI system includes the Bill of Material (BOM) optimization module that identifies critical components in a BOM by evaluating price relative to factors that include, for example, the total BOM cost, current inventory levels, published End of Life dates and length of lead time. (Katz, ¶ 169). The BOM optimization module allows the user to optimize the BOM cost, delivery and quality by suggesting alternative components for the critical components in the BOM. *Id.*

The BOM optimization module can help determine the optimal allocation of components in the face of a component shortage. (Katz, ¶ 304). In response to an alert, an automatic invocation due to a news story, or the user’s own initiative, the user accesses the BOM optimization module and specifies in the input window the part number to be considered for BOM optimal allocation. *Id.* The BOM optimization module accesses other modules, such as an analytical engine, in an attempt to find a solution using, for example, linear programming, integer programming, quadratic programming, constraint programming and other techniques suitable for discovering a solution. *Id.* Upon discovery of a solution by the analytical engine,

the solution is passed back to the BOM optimization module, which presents the solution to the user. *Id.* The solution may be transmitted or made available to the user through an email or voice message and such notification is particularly useful when the time to calculate a solution is long. *Id.* The user may also specify that the solution discovered by the analytical engine be delivered by email or other communication form to a list of individuals other than the user who initiated the request to the BOM optimization component. *Id.*

B. Description of the Chandra Disclosure

Chandra discloses a method for associating related electronic messages in computer storage. (Chandra, Abstract). Chandra discloses a transportable application that may be used, for example, to bring together people, systems and information needed to contribute, make decisions, and take action on collaborative business processes or projects. (Chandra, ¶. 34). When a transportable application is opened, it reveals a live, shared, structured workspace that is specific to a project or process. *Id.* The workspace is continually updated to reflect the latest input of any recipient or user. *Id.*

Chandra discloses that when a transportable application is accessed by a recipient, data for its dynamic content regions is automatically retrieved. (Chandra, ¶ 37). Input created by the recipient is accepted by the server and updates the dynamic region of the transportable application. *Id.* Thus, the dynamic content is always current, and whenever any recipient opens and views the transportable application, the content of the transportable application is retrieved and displayed in then-current form. *Id.*

The transportable application creates a shared workspace in which multiple persons or systems can interact within the same transportable application, and all responses are aggregated in one place. (Chandra, ¶ 38). The content of the transportable application is current when read;

the transportable application is constantly updated so users can always see the most current information and responses of other group members. *Id.*

Transportable applications are created based on transportable application templates. (Chandra, ¶ 264). Examples of templates disclosed include, *inter alia*: Proposal Management for displaying a proposal for review and feedback and compiling signoff by reviewers or stakeholders (Chandra, ¶ 273); File Approval for requesting approval on files that require consensus with participants either approving or disapproving and sharing comments (Chandra, ¶ 277); Image Poll for gathering feedback and reaching consensus about images (Chandra, ¶ 281); and Poll for gathering opinions and feedback and seeing voters' comments and a chart of the results (Chandra, ¶ 285). Participants may vote for one or more of a plurality of options and the results are displayed in a pie chart, bar chart, or similar graphic. (Chandra, ¶ 455).

C. Applicable Law

A claimed invention is unpatentable if the differences between it and the prior art “are such that the subject matter *as a whole* would have been obvious at the time the invention was made to a person having ordinary skill in the art.” 35 U.S.C. 103(a) [emphasis added]. The ultimate determination of whether an invention is or is not obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 291 (CCPA

1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

The Federal Circuit has made clear that all claim limitations must be considered and that it is impermissible to merely consider the “idea” of an invention. In *Jones v. Hardy*, 727 F.2d 1524 (Fed. Cir. 1984), the Federal Circuit stated:

Under the patent statute, Title 35 U.S.C., “ideas” are not patentable; claimed structures and methods are. Reducing a claimed invention to an “idea,” and then determining patentability of that “idea” is error. Analysis properly begins with the claims, for they measure and define the invention.

Id. at 1527 [citations omitted].

Furthermore, regarding the requirement that for establishing a *prima facie* case of obviousness all the claim limitations must be taught or suggested by the prior art, the *Jones* Court stated:

The “difference” may have seemed slight (as has often been the case with some of history’s greatest inventions, *e.g.* the telephone) but it may also have been the key to success and advancement in the art resulting from the invention. Further, it is irrelevant in determining obviousness that all or all other aspects of the claim may have been well known in the art.

Id. at 1528.

An additional requirement for providing a *prima facie* case of obviousness is that the Examiner must provide a basis for combining or modifying the cited references. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990).

The case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a

showing of the teaching, suggestion, or motivation to combine prior art references. *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998) (describing “teaching or suggestion or motivation [to combine]” as an “essential evidentiary component of an obviousness holding”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1225, 1232 (Fed. Cir. 1998) (“the Board must identify specifically....the reasons one of ordinary skill in the art would have been motivated to select the references and combine them”); and *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (examiner can satisfy burden of obviousness in light of combination “only by showing some objective teaching [leading to the combination]”).

Evidence of a suggestion, teaching or motivation to combine references may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or from the nature of the problem to be solved. *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996). The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 138, 227 USPQ 543, 547 (Fed. Cir. 1985).

In the case *In re Kotzab*, 217 F.3d 1365 (Fed. Cir. 2000), the Court states:

Most, if not all inventions arise from a combination of old elements . . . Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant.

Id. at 1395.

The *Kotzab* Court further distinctly points out the requirement that particular findings are required as to the justification of combining references. The Court stated:

The motivation, suggestion or teaching may come explicitly from statement in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references . . . The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art . . . Whether the Board relies on an express or an implicit showing, it must provide particular findings related thereto. Broad conclusory statements standing alone are not evidence.

Id. at 1370.

D. Analysis

Appellants identified a need for a method and associated computer program product to enable a group of individuals or entities to act as a single decision-making unit in determining whether to implement a course of action. Appellants claimed, *inter alia*, “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action” and “determining the cumulative support for the query responses received.” (Claims 1, 19). The Examiner determined that Katz does not disclose these limitations and cited Chandra as disclosing them. (Final Office Action, p. 3).

The Examiner cites Chandra, page 14, column 1, lns. 52-67 for disclosing Appellants’ claimed limitation of “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action.” (Final Office Action, page 3). In the citation provided by the Examiner, Chandra discloses:

[0271] Order Exception Management. Tracks and manages the resolution of a problem that occurs in fulfilling the order. Enables collaboration across the enterprise, partners and suppliers to define the exception and decide on a solution.

[0272] Product Configuration. Manages the product configuration process from initial product requirements to configuration and approval. Participants can modify documents and approve or disapprove the final versions.

[0273] Proposal Management. Displays a proposal for review and feedback and compiles sign-off by reviewers or stakeholders.

[0274] Recruiting management. Organizes and streamlines the process of interviewing a candidate, from receiving the resume to making an offer.

Chandra, page 14, column 1, lns. 52-67, [emphasis added].

Appellants respectfully assert that Chandra does not teach or suggest or disclose therein “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action.” While Chandra discloses that a proposal may be displayed for review and that the system may “compile sign-off by reviewers or stakeholders,” Chandra does not teach that a *setpoint is maintained* that represents *the minimum cumulative support required to implement a proposed action*. Appellants do not agree that “cumulative support” reads on “compile sign-off” as stated by the Examiner (Final Office Action, page 3). Furthermore, Chandra also fails to disclose, teach or suggest “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action.”

The Examiner states that Chandra discloses that “Once [users] have indicated their support/collected opinions, there is compile sign-off on the proposed action disclosed by Chandra.” (Final Office Action, p. 12, ¶ 3). However, Appellants respectfully assert that Chandra discloses the opposite – Chandra discloses that the system “compiles sign-off by reviewers or stakeholders.” (Chandra, ¶ 273). “Compiling” is defined in Merriam-Webster as

“to collect and edit into a volume.” In the proposal management system taught by Chandra, a proposal is displayed to a group of users and sign-offs by reviewers are merely compiled, or collected, by the system. (Chandra, ¶ 273). Therefore, Chandra does not teach “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action” as claimed by Appellants. (Claims 1, 19).

The Examiner states that Chandra discloses that a “user customizable template is created to gather approvals from a list of selected participants and is presented and *compiled for sign-off according to set threshold*.” (Final Office Action, p. 12 [emphasis added]). However, Appellants respectfully assert that the Examiner has impermissibly read an “idea” from Chandra that Chandra does not disclose or suggest. As the *Jones* Court instructed, “‘ideas’ are not patentable; claimed structures and methods are.” *Jones v. Hardy*, 727 F.2d at 1527. Chandra states only that the *system* compiles signoffs by reviewers and stakeholders. (Chandra, ¶ 0273). Chandra does not indicate, suggest or teach, as the Examiner has found, that the system gathers “approvals from a list of selected participants and is presented and *compiled for signoff according to a set threshold*.”

All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). All claim limitations must be taught or suggested to maintain an obviousness rejection. Appellants respectfully assert that a *prima facie* case of obviousness has not been presented because the Examiner has not provided any prior art reference or combination of references that discloses, teaches or suggests Appellants’ claimed limitation of “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action.” Therefore, Appellants respectfully request that the Board find Appellants’ claims to be patentable.

The Examiner further stated that Appellants' claimed limitation of "determining the cumulative support from the query responses received" was not disclosed, taught or suggested by Katz. (Final Office Action, p. 3). However, the Examiner cites Chandra as disclosing this claim limitation at Chandra, page 3, column 2, lns. 40-57. (Final Office Action, page 3). Chandra states therein:

A shared workspace is created in which multiple persons or systems can interact within the same transportable application, and all responses are *aggregated in one place*. The content of the transportable application is current when read; the transportable application is constantly updated so users can always see the most current information and responses of other group members. Transportable applications may be supported by related services... Transportable applications may generate events that are acted upon by other transportable applications, and may act upon events that are received from external systems.

Chandra, page 3, column 2, lns. 40-57 [emphasis added].

The Examiner further cites Chandra, paragraphs 37-40 to show that Chandra discloses, teaches or suggests Appellants' claimed limitation of "determining the cumulative support from the query responses." The Examiner states that Chandra discloses therein that "the software does the 'determining' act dynamically by aggregating this data." (Final Office Action, p. 12).

Appellants respectfully assert that Chandra does not teach, disclose or suggest "determining the cumulative support from the query responses" in either of the citations to Chandra provided by the Examiner, *supra*. Chandra teaches that the content of the transportable application is current when read so that users can always see the most current information and responses of other group members. Chandra discloses merely that responses are aggregated in one place. Merriam-Webster defines "aggregate" as "formed by the collection of units or particles into a body, mass, or amount." However, Chandra provides no teaching, suggestion or

disclosure that Chandra's computer implemented process *determines* the cumulative support as required to support a *prima facie* case of obviousness.

The Merriam-Webster dictionary defines determine as "to find out or come to a decision about by investigation, reasoning, or calculation." Appellants use "determining" in its usual and common meaning, by claiming a computer implemented method that includes the step of "coming to a decision" based upon the cumulative support from the query responses. "Determining" or "coming to a decision" in a computer implemented method is different than the computer implemented method of Chandra that merely *updates* information and responses and *aggregates* these responses at one location so that the most current information may be *viewed by users* of the application. Chandra does not teach, suggest or disclose Appellants' claimed limitation of "*determining* the cumulative support from the query responses."

"Determining the cumulative support," as Appellants claim, requires more than aggregating or arranging or graphing. "Determining" requires investigating or coming to a decision by investigation, reasoning or calculation. Appellants disclose that "The central forum coordinator *determines* if sufficient support for a proposition has been reached, *i.e.*, the responses contain decision parameter values that, when processed by the predetermined formula, provide a collective value greater than a minimum setpoint value." (Specification, p. 7, lns. 9-13 [emphasis added]). Therefore, Appellants use the word "determining" in its customary and common sense - processing the data (responses) with a predetermined formula to *determine* the cumulative support from the responses received from the plurality of decision makers.

Chandra merely discloses that data is "gathered" into one place. Chandra may teach or suggest that data in the form of responses may be aggregated, displayed, arranged, graphed, shown, viewed or observed, but Chandra does not show, suggest or teach that the responses or

signoffs are aggregated *and then* acted upon to *determine the cumulative support from the responses*. Appellants do not claim that responses to the query merely be placed on view, graphed, arranged or aggregated. Appellants claim a method that *determines* whether or not a cumulative support has been achieved.

Nowhere in the paragraphs cited by the Examiner does Chandra suggest or teach that cumulative support from the aggregated responses *is determined*, only that data is, as the Examiner states, aggregated or gathered. Because Chandra does not teach, suggest or disclose Appellants' claimed limitation of "determining the cumulative support from the query responses," a *prima facie* case of obviousness has not been presented. Therefore, Appellants respectfully request that the Board find Appellants' claims to be patentable.

Appellants respectfully assert that Katz does not suggest, disclose, or teach Appellants' claim limitation "communicating a query to the plurality of decision-making entities, wherein the query includes a description of the proposed action. (Claim 1, 19). The Examiner states that Katz discloses this limitation by citing page 20, column 2, lns. 32-44 and page 7, column 2, lns. 24-41. (Final Office Action, page 2). Katz states therein:

In another example, when a new supplier achieves a status rating (such as a "qualified" rating) for SDRAM or a certain family of DRAM, then the owner of the alert may be notified by email of such an event, invoking the supplier allocation module of module layer 86 to re-calculate the percentage of business that should be allocated to suppliers for SDRAM and/or DRAM. Thus, an alert or plurality of alerts may automatically invoke a module or plurality of modules from module layer 86.

Katz, page 20, column 2, lns. 32-44.

Appellants respectfully assert that this cited passage of Katz does not disclose or teach Appellants' claimed limitation "communicating a *query* to the plurality of decision-making entities" as the Examiner states. (Final Office Action, page 2). Katz merely discloses sending

an “alert” to a group of people, but Katz does not disclose or teach or suggest that the alert contains a *query* communicated to the plurality of decision-making entities as claimed by Appellants.

It is important to note that Appellants use the word “query” in its usual and customary sense. The Examiner points out that “alert” is defined in one dictionary that is cited by the Examiner as “where one can look around,” thereby indicating that a search was being done. (Final Office Action, p. 10). However, Appellants use the common definition of the word “query” as given in the Merriam-Webster Dictionary: “question, inquiry.” Therefore, when Appellants used the word “query,” Appellants did not mean “where one can look around,” but instead used the term in its usual and customary sense, as “question or inquiry.”

In the paragraphs following the above citation from Katz, Katz provides an exhaustive list of “alerts” that may be issued. (Katz, paragraphs 265-293). Significantly, not a single “alert” listed by Katz is a query. The “alerts” include, *inter alia*, “The lead time has exceeded a certain limit for a supplier;” (Katz, ¶ 266); “The price for a given component fell below or above a given percentage level from the contract price;” (Katz, ¶ 271). As may be seen, each of these alerts alert the recipient to a *fact*, to something that has *already happened*, and does not communicate a *query* as claimed by Appellants that requires a response.

In support of the Examiner’s contention that the *alerts* sent out by Katz are the same as Appellants’ claimed *query*, the Examiner states that the system of Katz uses the query/search method to *look for and alert the user to an action that needs to be accomplished*. (Final Office Action, p. 10 [emphasis added]). As noted above, Appellants are not using the word “query” in the sense “to look around” but in the sense of “question.” While the Examiner may correctly point out that Katz analyzes a plurality of discovered data, and produces one or more reports or

alerts concerning the data, that is not “communicating a *query* to the plurality of decision-making entities” as Appellants claim. Nor, as the Examiner contends, does Katz teach or disclose that the alert is to “an action that needs to be accomplished.” As stated above, each of the alerts listed by Katz in paragraphs 266-293 are alerts of an event that *has already occurred* and are not alerts to an action that *needs to be accomplished*, as asserted by the Examiner, nor queries that request a specific response, as claimed by Appellants.

Significantly, the Examiner has not stated that these “alerts” are in fact “queries” as claimed by Appellants in claims 1 and 19. Furthermore, the Examiner has not contested Appellants’ previous assertion that the “queries” listed by Katz are not “queries” at all, because there is no question being asked in these alerts. Nor does the Examiner state that these queries are communicated to “the plurality of decision-making entities” as claimed by Appellants. (Claim 1, 19).

Appellants use the word “query” in its usual and customary sense of “question, inquiry.” Appellants respectfully assert that the Examiner has not shown that Katz communicates a *query* (question) to a *plurality of decision-making entities, wherein the query includes a description of the proposed action* as claimed by Appellants and has thereby failed to establish a *prima facie* case of obviousness that requires each and every limitation claimed by Appellants be taught or suggested by the cited references. Therefore, Appellants respectfully request that the Board find Appellants’ claims to be patentable.

Appellants’ claims further include the limitation of “receiving responses to the query from the plurality of decision-making entities.” (Claims 1, 19). The Examiner states that Katz discloses this limitation at Katz, page 23, column 1, lns. 31-49. (Final Office Action, page 3). Katz discloses therein:

For example, such criteria may include maximizing production, maximizing revenues, maximizing margins, etc. Such an analysis takes into account the production schedule, demand forecast In response to an alert . . . the user preferably accesses the functionality of BOM optimization module in module layer 86 through the VCA user interface 208 . . . The input window, in turn presents the data pertinent to the task of optimal BOM allocation data, such as production schedule, demand forecast, inventory of components . . . It should be noted that the inventory data for the user-specified part is an example of internal data 30.

Katz, page 23, column 1, lns. 31-49.

Appellants respectfully assert that Katz does not disclose or teach “receiving responses to the query from the plurality of decision-making entities.” Instead, Katz discloses that a user may access the functionality of the BOM (Bill of Material) optimization system, thereby showing that a computer can receive and respond to a query *from the user*. However, it is the impermissible use of hindsight based obviousness analysis that modifies the disclosure of Katz - that a user may access the functionality of the BOM system - into Appellants’ claimed limitation of “receiving responses to the query from the plurality of decision-making entities.” The Examiner has provided no suggestion or teaching from the cited references that show the desirability to modify Katz to arrive at Appellants claimed invention. Without such teaching from the references themselves, Appellants respectfully assert that the rejection is based upon impermissible hindsight-based obviousness analysis using Appellants’ own specification as a blueprint. Hindsight is not permitted. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138 (Fed. Cir. 1985).

As the Examiner states, “It is well known in the art that a user initiated search/query generates a response from the database wherein “response to the query” reads on ‘user selects a particular part of part family from a search page.’” (Final Office Action, p. 11). This statement results from impermissible use of hindsight obviousness analysis to suggest that this teaches

sending a query *to* a user for response (*i.e.*, a reversal of the computer and user roles). There is no suggestion or motivation within the references themselves that the well-known fact that “a user query to a database will generate a response” may be modified into Appellants’ claimed limitation “receiving responses to the query from the plurality of decision-making entities.”

Appellants claim that the *system* receives [not that the system generates] responses [plural] to *the* query [the query that was sent *by* the system to the plurality of decision-making entities] from *the* plurality of decision-making entities, wherein *each* response includes an indicator of support for the proposed action.” Katz fails to disclose that the *system* receives *responses to the query* from the *users* [plural] who were sent the query. It is important that responses be received from multiple users because, as Appellants later claim, these multiple responses must be analyzed by the system for “determining the cumulative support from the query responses received.” (Claims 1, 19).

Therefore, because Katz does not disclose, teach or suggest Appellants’ claimed limitation of “receiving responses to the query from the plurality of decision-making entities,” Appellants respectfully assert that a *prima facie* case of obviousness has not been presented. Therefore, Appellants respectfully request that the Board find Appellants’ claims to be patentable.

Appellants further claim that query responses received from the plurality of decision-making entities “includes an indicator of support for the proposed action.” (Claim 1, 19). The Examiner states that Katz discloses this limitation at Katz, page 10, column 1, lns. 37-52; page 10, column 2, lns. 13-22. (Final Office Action, page 2). Katz discloses therein:

Strategic component identification module: This module preferably provides the user with the ability to identify which components are strategic and which components are tactical, helping the user focus on the most critical components. Strategic components are

important to the operations and end product of an enterprise, whereas tactical components are less critical, easier to replace, and often not customized. The strategic component identification module creates a 'criticality rating' based on a predetermined scale, such as 1-10 or 1-100, which is derived from a plurality of variables, which may include any of the following:

- Total spent on the part
- Number of parts purchased
- Cost per part
- Revenues and profit impact of the part
- BOM analysis to determine which products would be affected by a shortage of this part and how much revenue would be affected by such a shortage . . .

Katz, page 10, column 1, lns. 37-54.

After all the parts have been rated, the module then preferably allows users to select which parts to consider strategic and which tactical by defining a criticality rating threshold for each category. The selected parts are saved and used in subsequent analyses. Users then define different weights for each variable in the formula, thus customizing the formula.

Katz, page 10, column 2, lns. 13-19.

Katz, in the cited portions shown above, discloses a module wherein a user can define a criticality rating for different components used in a manufacturing process. These criticality ratings are based upon variables such as a total spent on the part or the number of parts purchased, as stated by Katz above. These criticality ratings are not what Appellants claim. Appellants are not claiming that a computer receives rating information and stores it, which is what Katz discloses above. Rather, Appellants claim that specific information is received from specific sources in response to a query and that this specific information is stored. Appellants claim that the system receives *responses* [specific information] from a plurality of decision making entities [specific sources], and that each response includes an indicator of support [answer, which is specific information] for the proposed action. (Claims 1 and 19).

Appellants' claimed "indicator of support" is not merely a rating but is the *answer*, or indicator of support, to the *query* that was sent to the plurality of decision-making entities. Since Katz does not teach, suggest or disclose that multiple responses are received in response to the query sent out by the system, and *these responses each includes an indicator of support for the proposed action*, a *prima facie* case of obviousness has not been presented. Appellants therefore respectfully request that the Board find Appellants' claims to be patentable.

The statute requires that, for a showing of obviousness, "the subject matter *as a whole* would have been obvious." 35 U.S.C. 103(a) [emphasis added]. As the Federal Circuit has stated, "Focusing on the obviousness of substitutions and differences instead of on the invention *as a whole* . . . was a legally improper way to simplify the difficult determination of obviousness." *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1383 (Fed. Cir. 1986) [emphasis added].

Appellants respectfully assert that the Examiner has lost track of the "subject matter as a whole" and has impermissibly focused on the obviousness of substitutions and differences instead of focusing on the invention as a whole. Using impermissible hindsight analysis, the Examiner has sought to find in the cited references the limitations claimed by Appellants without regard either to what the cited references teach or what the Appellants' claimed invention is as a whole.

Furthermore, the Examiner has failed to provide a particular showing of the motivation, suggestion or teaching to justify combining Katz with Chandra. As the Federal Circuit has stated, "The motivation, suggestion or teaching may come explicitly from a statement in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved." *In re Kotzab*, 217 F.3d at 1370. For an implicit finding of the justification, the

Kotzab Court further teaches, “The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.” *Id.* The Federal Circuit further requires evidence to support the justification to combine references. In the case *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002), the Court stated, “When patentability turns on the question of obviousness, the search for and analysis of the prior art includes *evidence* relevant to the finding of whether there is a teaching, motivation or suggestion to select and combine the references relied on as evidence of obviousness. *Id.* at 1343 [emphasis added].

The Examiner’s justification for combining Katz with Chandra does not fulfill the requirements of the Federal Circuit for an implicit showing with evidence. As Appellants have respectfully asserted, the Examiner has not found each and every limitation of Appellants’ claimed invention. Furthermore, the Examiner has not addressed the nature of the problem to be solved as it applies to the combined references. The Examiner states that she is “establishing motivation in obviousness in the knowledge generally available to one of ordinary skill in the art, to modify the invention of Katz with the teachings of Chandra, as explained in the office action. (Final Office Action, p. 13). Such a statement, following a restatement by the Examiner that the references teach or suggest the claimed limitations, does not provide the *evidence* or the *implicit* or *explicit* showing of the justification required by the Federal Circuit. There is no similarity between the problems sought to be solved by Appellants and the problems sought to be solved by the cited references. The cited references do not teach the limitations claimed by Appellants. Therefore, Appellants respectfully request that the Board find that Appellants claims 1-39 are patentable.

In summary, the references cited by the Examiner do not teach, suggest or disclose all the limitations claimed by Appellants. First, Katz does not teach, suggest or disclose “communicating a *query* to the plurality of decision-making entities.”

Second, Katz does not disclose “receiving responses to the query from the plurality of decision-making entities.”

Third, Katz does not disclose that each response “includes an indicator of support for the proposed action.”

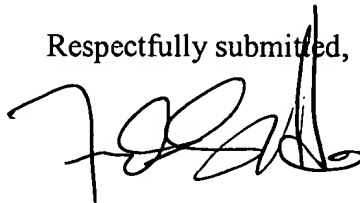
Fourth, Chandra does not teach or disclose “maintaining a setpoint representing a minimum cumulative support required to implement a proposed action.”

Fifth, Chandra does not teach or disclose “determining the cumulative support from the query responses.”

Furthermore, the Examiner has failed to provide any justification for combining the references cited and has failed to provide any evidence in support of any justification for combining Katz and Chandra.

WHEREFORE, Appellants respectfully request that the Board find that the claims 1-39 presented on appeal are patentable.

Respectfully submitted,



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APPENDIX

A. Claims on Appeal.....	28-34
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APPENDIX A

CLAIMS ON APPEAL

1. (Previously Presented) A computer implemented method, comprising:
 - maintaining identification for a group of decision-making entities in a memory device;
 - maintaining a setpoint representing a minimum cumulative support required to implement a proposed action;
 - communicating a query to the plurality of decision-making entities, wherein the query includes a description of the proposed action;
 - receiving responses to the query from the plurality of decision-making entities, wherein each response includes an indicator of support for the proposed action;
 - determining the cumulative support from the query responses received; and
 - automatically implementing the proposed action if the cumulative support is greater than the setpoint.
2. (Original) The method of claim 1, further comprising communicating messages to one or more of the decision-making entities.
3. (Original) The method of claim 1, further comprising communicating messages from one or more of the decision-making entities to at least one different decision-making entity.
4. (Original) The method of claim 1, wherein the indication of support is of a type selected from qualitative, quantitative, functional or a combination thereof.
5. (Original) The method of claim 1, wherein the step of automatically implementing the decision includes transmitting an instruction to one or more trading networks.
6. (Original) The method of claim 1, further comprising:

imposing arbitration among the plurality of decision-making entities if the query responses provide cumulative support less than the minimum setpoint value.

7. (Original) The method of claim 1, further comprising:
initiating an intra-group caucus between a plurality of the decision-making entities.
8. (Original) The method of claim 1, further comprising:
receiving a request from one of the decision-making entities to initiate a query, wherein the request includes the proposed action.
9. (Original) The method of claim 1, wherein the query is formulated by one of the plurality of decision-making entities and transmitted to a central coordinator for subsequent communication to the plurality of decision-making entities.
10. (Original) The method of claim 9, wherein the setpoint is established by the decision-making entity that formulates the query.
11. (Original) The method of claim 1, wherein the step of implementing the decision comprises transmitting an electronic communication to a third party.
12. (Original) The method of claim 1, wherein the identification of each decision-making entity includes a weighting factor; and wherein the step of determining the cumulative support includes applying the weighting factor against each indicator of support for the decision.
13. (Original) The method of claim 5, further comprising:
sending a communication to each of the plurality of decision-making entities stating the amount of additional support necessary to reach the minimum setpoint.

14. (Original) The method of claim 1, wherein the query responses include weighting factors or other criteria relevant to the level of support.

15. (Original) The method of claim 13, further comprising:
automatically communicating a second query to the plurality of decision-making entities if the additional support necessary to reach the minimum setpoint value is less than an second setpoint.

16. (Original) The method of claim 1, further comprising:
querying one of the plurality of decision-making entities for authorization to implement the decision if the query responses provide cumulative support greater than the minimum setpoint.

17. (Original) The method of claim 1, further comprising:
obtaining approval or denial to implement the decision.

18. (Previously Presented) The method of claim 1, further comprising:
communicating the cumulative support to the plurality of decision-making entities;
formulating a second query based on this cumulative support;
receiving responses to the second query from the plurality of decision-making entities, wherein each of the second responses include a revised indication of support;
determining a revised cumulative support for the second query incorporating the revised indications of support; and
implementing the decision if the revised cumulative support is greater than the minimum setpoint.

19. (Previously Presented) A computer program product including instructions embodied on a computer readable medium, the instructions comprising:
maintaining instructions for maintaining identification for a group of decision-making entities in a memory device;

maintaining instructions for maintaining a setpoint representing a minimum cumulative support required to implement a proposed action;

communicating instructions for communicating a query to the plurality of decision-making entities, wherein the query includes a description of the proposed action;

receiving instructions for receiving responses to the query from the plurality of decision-making entities, wherein each response includes an indicator of support for the proposed action;

determining instructions for determining the cumulative support from the query responses received; and

implementing instructions for automatically implementing the decision if the cumulative support is greater than the setpoint.

20. (Original) The computer program product of claim 19, further comprising communicating instructions for communicating messages to one or more of the decision-making entities.

21. (Original) The computer program product of claim 19, further comprising communicating instructions for communicating messages from one or more of the decision-making entities to at least one different decision-making entity.

22. (Original) The computer program product of claim 19, further comprising instructions for formulating a decision of a type selected from qualitative, quantitative functional or a combination of decisions thereof.

23. (Original) The computer program product of claim 19, wherein the implementing instructions include transmitting instruction for transmitting an instruction to one or more trading networks.

24. (Original) The computer program product of claim 19, further comprising:
instructions imposing arbitration among the plurality of decision-making entities if the query responses provide cumulative support less than the minimum

setpoint.

25. (Original) The of claim 19, further comprising
caucusing instructions for initiating an intra-group caucus between a plurality of
the decision-making entities.

26. (Original) The computer program product of claim 19, further comprising:
initiating instructions for allowing one of the decision-making entity to initiate a
query.

27. (Original) The computer program product of claim 26, further comprising:
identifying instructions for identifying a query that is formulated by one of the
plurality of decision-making entities; and
transmitting instructions for transmitting the query to the plurality of decision-
making entities.

28. (Original) The computer program product of claim 27, further comprising:
identifying instructions for identifying a setpoint established by the decision-
making entity that formulated the query.

29. (Original) The computer program product of claim 19, wherein implementing
instructions for implementing the decision comprise transmitting instructions for
transmitting an electronic communication to a third party.

30. (Original) The computer program product of claim 19, further comprising:
maintaining instructions for maintaining a weighting factor for each of the
decision-making entities; and
applying instructions for applying the weighting factor for each of the decision-making
entities against the indication of support received from the corresponding decision-
making entity.

31. (Original) The computer program product of claim 24, further comprising:
transmitting instructions for transmitting the amount of additional support necessary to reach the minimum setpoint value to each of the plurality of decision-making entities.
32. (Original) The computer program product of claim 19, wherein the indication of support provides a graduated level of support.
33. (Original) The computer program product of claim 31, further comprising:
transmitting instructions for automatically communicating a second query to the plurality of decision-making entities if the additional support necessary to reach the minimum setpoint is less than a second setpoint.
34. (Original) The computer program product of claim 19, further comprising:
generating instructions for generating a query to one of the plurality of decision-making entities for authorization to implement the decision if the query responses provide cumulative support greater than the minimum setpoint.
35. (Original) The computer program product of claim 19, further comprising:
transmitting instructions for communicating the cumulative response to the plurality of decision-making entities;
transmitting instructions for formulating a second query based on this cumulative response;
transmitting instructions for communicating second responses from the plurality of decision-making entities, wherein the second responses comprise revised weighting factors;
transmitting instructions for determining the cumulative response to the second query incorporating the revised weighting factors;
implementing instructions for implementing the decision if the second query responses provide cumulative support greater than the minimum setpoint value.

36. (Original) The method of claim 1, wherein one or more of the plurality of decision-making entities communicates through a personal digital assistant.
37. (Original) The method of claim 1, wherein the communications occur over a wireless network.
38. (Original) The method of claim 1, wherein the communications utilize instant messaging.
39. (Original) The method of claim 1, further comprising:
providing a collaboration manager to interface between decision-making entities having different computer platforms or applications.